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IN THE

Supreme Court of the United States

October Term, 1967

No. 1362

CLAUDE CANADA,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

CLAUDE CANADA
16622 Taylor Court
Gardena, California

In Propria Persona

Prepared by
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No.....

CLAUDE CANADA,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Fifth Division of the Second Appellate District Court of Appeal of the State of California entered in the above-entitled case on January 24, 1968.

OPINIONS BELOW

The opinion of the Fifth Division of the Second Appellate District Court of Appeal of the State of California, attached hereto as Appendix A, is not officially reported.

JURISDICTION

After rendition of the decision by the District Court of Appeal in *People v. Canada*, Petitioner timely filed a petition for hearing in the Supreme Court of the State of California which petition was denied on March 20, 1968. A copy of the order denying the hearing is included herein as Appendix B. Petitioner invokes the jurisdiction of this Court to review this decision under 28 U.S.C. §1257(3), since a right has been especially set up and claimed under the United States Constitution.

QUESTIONS PRESENTED

1. Under the decisions of this Honorable Court in *Henry v. State of Mississippi*, 379 U.S. 443, 13 L.Ed.2d 408, and *Miranda v. Arizona*, 384 U.S. 436, whether a defendant is to be deemed by failing to

object, to have understandingly and knowingly waived his defense to the admission of incriminating statements solicited from the Defendant without compliance with the warning required by the *Miranda* decision.

2. Whether a defendant was denied his right of confrontation of witnesses against him as guaranteed to him under the due process clause of the Fourteenth Amendment to the United States Constitution as decided by this Honorable Court in *Williams v. New York*, 337 U.S. 241?

STATEMENT OF THE CASE

This is an appeal by the Defendant-Petitioner from the Judgment of conviction of the Defendant rendered in the Superior Court of the State of California for the County of Los Angeles.

The Defendant-Petitioner was charged in an information with two counts of violating §496 of the Penal Code of the State of California (receiving stolen goods). The Defendant-Petitioner, who at all times was represented by private counsel, pleaded not guilty, and trial by jury commenced on November 2, 1966, in Department Southwest C of the Superior

Court for the County of Los Angeles, Honorable Bernard Lawler, Judge presiding, and was tried before a jury. The jury found Defendant-Petitioner guilty as charged in both counts.

On December 2, 1966, Defendant-Petitioner made a motion for a new trial which was denied by the Superior Court. Probation was denied. Defendant-Petitioner was sentenced to the term prescribed by law on said two counts which were to run concurrently. Defendant-Petitioner filed a Notice of Appeal on said date. An appeal was taken to the Court of Appeal for the State of California, during which time Defendant-Petitioner was free on bail. On January 24, 1968, the Court of Appeal of the State of California affirmed the judgment of conviction. On March 20, 1968, the Supreme Court of the State of California denied, without opinion, a hearing on the decision of the Court of Appeal.

STATEMENT OF FACTS

Petitioner's brief in the California District Court of Appeal [therein known as Appellant's Brief, and included in the Certified Record forwarded herewith] contains a detailed record of the evidence

produced in the trial court. The significant facts may be concisely summarized as follows:

On or about May 31, 1966 (Rptr.Tr. 11), victim Eugene Scott's turquoise bucket seats and console were stolen from his automobile (Rptr.Tr.11). The victim was able to identify said console on the basis of some scratches which victim had made with a screwdriver in an attempt to open said console prior to its disappearance (Rptr.Tr.13). Victim was able to identify said seats as his, only on the grounds that said seats were the same color [turquoise] as the previously identified console and not because of any identifying marks or scratches (Rptr.Tr.20).

Victim Eugene Scott's seats and console were found on or about June 9, 1966, in Appellant's garage at his residence (Rptr.Tr.72-73).

On or about June 7, 1966 (Rptr.Tr.23), victim Elisha Price's black bucket seats, console, and rear seat were stolen from his automobile (Rptr.Tr.26). Victim was able to identify said bucket seats on the basis of some paint that victim had transferred onto said seats when painting his

home prior to their disappearance (Rptr.Tr. 28).

Victim Elisha Price's bucket seats were found on or about June 8, 1966 (Rptr. Tr.45) in the back of a pick-up truck parked in the street in front of Petitioner's business, R. P. Upholstery, located at 1739 West Gardena Boulevard (Rptr.Tr. 45). Victim's back seat was found in a storage garage at the R. P. Upholstery Company on or about June 9, 1966 (Rptr. Tr.70).

Officer Louis Purcel, police sergeant for the Gardena Police Department, was the investigating and arresting officer in this case (Rptr.Tr.44). On the morning of June 8, 1966, Officer Purcel observed bucket seats in the back of a pick-up truck parked on the street in front of R. P. Upholstery Company, Petitioner's place of business (Rptr.Tr.45). Following an investigation of a stripped automobile, which belonged to victim Elisha Price (Rptr.Tr.46), Officer Purcel and victim proceeded to examine the bucket seats in the pick-up truck that Officer Purcel had observed previously that morning (Rptr.Tr. 46). Victim Elisha Price identified said

seats as his (Rptr.Tr.47).

Appellant came out to the truck and Officer Purcel asked Petitioner where he had obtained the seats (Rptr.Tr.49); Petitioner answered that he had purchased them from Don Street of Chula Vista, a wrecking yard (Rptr.Tr.49).

Officer Purcel then questioned Petitioner regarding any receipts Petitioner had for said seats, and Petitioner replied that all receipts were kept at C. P. Auto Wrecking which owned R. P. Upholstery (Rptr.Tr.49).

Officer Purcel proceeded to C. P. Auto Wrecking to find the said receipts. A Mr. Maxwell Osborne at C. P. Auto Wrecking, gave Officer Purcel a receipt from Don Street, and Officer Purcel then called Mr. Street (Rptr.Tr.51). Mr. Street told Officer Purcel that he had sold said seats with a bent back to Petitioner which had come out of a Chevrolet automobile that had gone over an embankment and had been in the mud and totally destroyed (Rptr.Tr.53). Petitioner had been on the telephone line and had initially identified the seats which Mr. Street referred to when speaking to Officer Purcel (Rptr.

Tr.53).

Subsequent to this, Officer Purcel left the Petitioner's place of business and then returned and conducted a search of R. P. Upholstery with the alleged consent of the Appellent (Rptr.Tr.54-55).

Officer Louis Purcel advised the Petitioner numerous times during this period of his constitutional rights (Rptr.Tr. 60-61). Neither the Reporter's Transcript nor the transcript of the preliminary hearing set forth the "exact" times of each admonishment of constitutional rights being given to the Petitioner.

Thereafter, Officer Purcel had a conversation with the Petitioner regarding the location of any further bucket seats owned by the Petitioner (Rptr.Tr.61-62). Officer Louis Purcel then served the Petitioner with South Bay Municipal Search Warrant No. 62 for the search of Petitioner's premises at 16622 Taylor Court, Torrance, California. Officer Louis Purcel discovered People's Exhibit 1 and People's Exhibit 2 in the garage of the aforementioned premises (Rptr.Tr.62).

On June 21, 1966, Petitioner was arrested for violation of the California

Penal Code, §487, Subdivision 3, and §496, Felonies, entitled *People v. Claude Canada*, M.C.F. 6300.

I

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR ALLOWING INTO EVIDENCE INCRIMINATING STATEMENTS OF PETITIONER IN VIOLATION OF THE *MIRANDA* RULE AND THEREBY DEPRIVED PETITIONER A FAIR TRIAL UNDER ARTICLE VI, §4 1/2 OF THE CALIFORNIA CONSTITUTION.

The United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436, guaranteed certain rights to private citizens who might be unaware of their privilege against self-incrimination. This case held that before any interrogation may take place of an individual in custody or otherwise restrained in any significant way, he must be informed:

(1) That he has the right to remain silent.

(2) That anything he says can and may be used against him in a court of law.

(3) That he has the right to the presence of an attorney both before and during interrogation.

(4) That if he cannot afford an attorney, one will be appointed for him prior to any questioning.

In the case at bar, Officer Louis Purcel discovered (People's Exhibit 4) the bucket seats allegedly belonging to Elisha Price on June 8, 1966, in the presence of Mr. Price who positively identified the bucket seats as belonging to him (Rptr.Tr.45-47). That thereafter, Officer Purcel engaged in a conversation with Petitioner regarding the possession of the aforementioned bucket seats. Petitioner was asked where he had obtained the seats and he answered that he had purchased them from a wrecking yard in Chula Vista (Rptr.Tr.49). At no time up to this point in the investigation was the Petitioner advised of his constitutional rights. However, it may be pointed out that this was merely the investigatory stage of the proceedings, but this becomes significant when one realizes that Officer Purcel returned to the Petitioner's place of business later that day and conducted a search of R. P. Upholstery Company in furtherance of this investigation (Rptr.Tr.54-55). Officer Purcel then conducted a search of a garage type loca-

tion belonging to Petitioner (Rptr.Tr.55). People's Exhibit 6 was located on these premises as well as People's Exhibit 10.

Officer Louis Purcel testified that after recovering the above items, he had *further* conversations with the Petitioner (Rptr.Tr.60). It is significant to note that on page 60, lines 14-16 of the Reporter's Transcript, the prosectuion asked the following questions:

> "Q Now, prior to *any* of these conversations, sir, had you advised the defendant of any constitutional rights?"
> (Emphasis added.)

The question itself leaves open the question as to whether or not the Petitioner was advised of his constitutional rights on the first occasion, the last occasion after possibly incriminating himself, or at *all* times.

Officer Louis Purcel stated that he had spoken to the defendant numerous times during the week previous to this (Rptr.Tr.60), but in answer to the question as to *when* he advised the Petitioner of his constitutional rights, he answered that *on this* day he advised him of his

right to remain silent; of the right to the services of legal counsel before making any statement;. that any statement he might make could be used against him in a judicial proceeding (Rptr.Tr.60-61).

It is significant to point out that the Petitioner was not advised that he had the right to the presence of an attorney both before and during interrogation or that if he could not afford an attorney one would be appointed prior to any questioning. The record is also silent as to the exact time of the admonishment of Petioner's rights to him.

Thereafter, Officer Purcel interrogated the Petitioner regarding any receipts he may have possessed for the aforementioned Exhibits (Rptr.Tr.61-62). At this time, the Petitioner made his exculpatory statements regarding the receipts he possessed for these items and the further statement that he had no more bucket seats at any other location (Rptr.Tr.61-62), including his garage at home. This was highly prejudicial in light of the subsequent search of the garage by Officer Purcel and the discovery of additional bucket seats. (Rptr.Tr.62.)

The record is silent as to the date of arrest and when the Petitioner was placed under arrest in relation to the aforementioned conversations with Officer Purcel. These statements by Petitioner were not confessions, but nevertheless statements which constitute less than a confession require the application of Article VI, §4 1/2 of the California Constitution. (*People v. Stewart*, 236 Cal. App.2d 27.)

It is Petitioner's position, in light of *Henry v. State of Mississippi*, 379 U.S. 443, 13 L.Ed.2d 408, that the Court is confronted here with the issue of whether or not the defense counsel at this time remained silent, for strategic or tactical purposes, or due to his unfamiliarity with the safeguards set forth in the *Miranda v. Arizona* decision.

A study of the Reporter's Transcript reveals that the defense counsel objected only twice during the course of the entire trial (Rptr.Tr.85,209). This fact, coupled with his failure to object to the introduction of the incriminating statements by the Petitioner, would undoubtedly leave more suspect the alternative that it was for strategical or tactical purposes.

In *Henry v. State of Mississippi*, 379 U.S. 443, 13 L.Ed.2d 408, this Honorable Court stated, at page 446, as follows:

> "We vacate the judgment of conviction and remand for a hearing on the question of whether the petitioner is to be deemed to have knowingly waived decision of his federal claim when timely objection was not made to the admission of the illegally seized evidence."

It is Petitioner's contention, in light of the foregoing discussion, that he was denied his constitutional safeguards as set forth in *Henry v. State of Mississippi, supra,* and *Miranda v. Arizona, supra.* Petitioner did not understandingly and knowingly waive his defense to the admission of the incriminating statements solicited from the Defendant-Petitioner as required by the *Henry* and *Miranda* decisions.

II

THE TRIAL COURT PREJUDICIOUSLY ERRED IN SUSTAINING PEOPLE'S OBJECTION TO CERTAIN QUESTIONS ON CROSS-EXAMINATION BY DEFENSE, AND THEREBY DEPRIVED DEFENDANT OF HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL UNDER THE LAW.

Police Officer Louis Purcel was the arresting officer of Petitioner Canada. Direct examination went as follows: (Rptr.Tr.64-65):

Q. Did you recover a number of packing -- or, I'm sorry, did you recover a number of seats from the defendant's place of business?

A. Yes.

Q. Did you find packing slips in any of the seats?

A. In the ones that I recovered, no.

Q. How many --

A. Exception, sorry: except in the back of this set that we have here marked Exhibit 6.

Q. How many seats do you say that you recovered from his place of business?

A. The number of seats I couldn't say. I believe there was 171 items. I could be a little bit

off. This is approximate.

Q. Most of which were seats and consoles?

A. Almost all seats and consoles except for 21, 22 radios.

Defense counsel attempted to establish that the Police Department had returned all but three or four of the one hundred seventy-one items allegedly "recovered" by Officer Louis Purcel. One cannot doubt that the word "recovered" when used in this context strongly implies to the jury that the Petitioner received one hundred seventy-one items of stolen goods. Since the prosecution brought this insinuation about by way of its own questioning (Rptr. Tr.64), it was incumbent on the trial court that it allow defense counsel to set the record straight as to these one hundred seventy-one items.

It is not to be doubted that the trial court is necessarily given broad discretion in controlling the examination of witnesses and in limiting the introduction of evidence to relevant and material matters. (Penal Code, §1044; Witkin, *California Evidence*, 2d ed., 1966, §1078, p.999.) The

Appellate Court in its decision recognizes that the trial court must accord defense counsel in a criminal case wide latitude in cross-examining the prosecution's witnesses because the right of cross-examination is considered implicit in the criminal defendant's constitutional right of confrontation. (*Douglas v. Alabama* (1965) 380 U.S. 415,418-419.)

Defense counsel in attempting to cross-examine Sergeant Purcel about his visits to Petitioner's premises after June 9, tried to show that of the approximately one hundred seventy-one items which were recovered by the Police Department, approximately one hundred sixty-eight were returned to the Petitioner, and therefore, he was not in possession of one hundred seventy-one different items of stolen property. The Appellate Court makes a point of the defense counsel's second reason for offering said testimony, to-wit, that the Petitioner was cooperative in returning said property. The Appellate Court, however, does not take full measure of defense counsel's attempt to show that the Petitioner was not in possession of one hundred seventy-one items of stolen

property which he stated to the Court he wished to prove. It can readily be ascertained that the jury could have drawn the inference that the Petitioner had committed one hundred seventy-one different crimes, to-wit, the receiving of one hundred seventy-one different items of stolen property.

It cannot be refuted that the fact that a defendant in a criminal prosecution has committed other crimes may be evidence of his bad character in his propensity or disposition to commit the crime charged. But bad character of a defendant cannot be shown for this purpose, and if this is the only purpose, the evidence must be excluded. (*People v. Coan*, 85 Cal.App.2d 580; *People v. Asavis*, 22 Cal.App.2d 492 (1937); *People v. Lapin*, 138 Cal.App.2d 251 (1956); and *People v. Baskett*, 237 Cal.App.2d 712 (1965).

The Appellate Court states:

> "The theories of relevance presented by defense counsel to the trial court do not sustain his contention."

The Appellate Court overlooked the defense counsel's first reason for his offer of

proof, to-wit, that he wanted to show that Petitioner was not in possession of stolen property, to-wit, one hundred seventy-one items. In spite of this, it is the rule of law that if the trial judge expressly limits the issues or otherwise indicates that he will not receive evidence on a certain subject, an offer of proof relating to the excluded issues would be futile and is excuse. *Lawles v. Calaway* (1944) 24 Cal.2d 81. A practical exception is recognized in cross-examination. If counsel were required to disclose the object of a line of questioning, the witness would be often forewarned and the cross-examiner seriously hampered. In *People v. Jones* (1911) 160 Cal. 358, the trial judge sustained a general objection to a question asked of the prosecution witness, on the ground that it did not appear that the answer would be material. The Supreme Court of the State of California in said decision held that this was reversible error.

In light of the foregoing, it is apparent that the Petitioner was denied his right of confrontation of witnesses against him as guaranteed to him under

the due process clause of the Fourteenth Amendment to the United States Constitution. In *Williams v. New York*, 337 U.S. 241, the United States Supreme Court recognized that due process required "that no person shall be tried and convicted of an offense unless he is afforded an opportunity to examine adverse witnesses," and "these salutary and time-tested protections" were essential where the question of punishment was involved.

The rapidity within which the jury was able to come back with an unanimous verdict clearly indicates the prejudice to the Petitioner.

CONCLUSION

Petitioner, therefore, respectfully requests that this Petition for a writ of certiorari be granted.

Respectfully submitted,

CLAUDE CANADA

In Propria Persona

April 19, 1968.

APPENDIX "A"

A majority of the signers of the following opinion certify that it does not meet the standard for official publication under Rule 976.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

CLAUDE CANADA,
Defendant and Appellant.

2d Crim 13300
Court of Appeal-Second Dist.
Filed: Jan. 24, 1968
Clay Robbins, Jr., Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Bernard Lawler, Judge. Affirmed.

Peter N. Priamos for Defendant and Appellant.

Thomas C. Lynch, Attorney General, and Edward A. Hinz, Jr., Deputy Attorney, for Plaintiff and Respondent.

Appellant was charged with two counts of violating section 496 of the Penal Code (receiving stolen goods). Appellant, who at all times was represented by private counsel, pleaded not guilty, and trial by jury commenced November 2, 1966. The jury found appellant guilty as charged in both counts. On December 2, 1966, the court denied appellant's motion for new trial, denied probation and sentenced appellant to state prison for the term prescribed by law, the sentences on both counts to run concurrently. Appellant appeals from the judgment.

On appeal appellant contends: (1) the evidence was insufficient to sustain his conviction; (2) the trial court erred in failing to exclude incriminating statements elicited from the appellant without complying with the warning required by the *Miranda* case; and (3) the trial court prejudicially erred in sustaining the People's objections to certain questions propounded by defense counsel on cross-examination of a police officer.

Summary of the Evidence

Appellant does not challenge the sufficiency of the evidence to support

the jury's implied findings that appellant was in possession of stolen property. He claims, however, that the evidence was inadequate to prove that the defendant knew that the property had been stolen.

The stolen property consisted of bucket seats and consoles from the automobiles owned respectively by Scott and Price. Scott's automobile was stripped about May 31, 1966, and Price's automobile about June 7, 1966. Both victims were able to identify the items stolen from their automobiles by distinctive markings on the equipment. Price's bucket seats were found on June 8, 1966, in the back of a pickup truck parked in the street in front of appellant's place of business, called "R. P. Upholstery." The back seat of Price's automobile was found in a storage garage at R. P. Upholstery the following day.

On June 8, 1966, Sergeant Purcell, the officer investigating the case, and Price visited appellant at the upholstery company and asked him where he had obtained the seats which were on the pickup truck, and appellant replied that he purchased them the night before from Dan

Street, of Chula Vista, a wrecking yard. Appellant asked Price what kind of car he owned and Price replied, "An Impala." Appellant then said, "Those aren't Impala seats." Sergeant Purcell then asked appellant whether he had any receipts for the seats, and appellant answered that all receipts were kept at C. P. Auto Wrecking, which owned R. P. Upholstery. Sergeant Purcell took possession of the seats. Thereafter Price and Sergeant Purcell went to C. P. Auto Wrecking. From a conversation on the premises of C. P. Auto Wrecking Sergeant Purcell secured information which led him to telephone Mr. Street. Mr. Street answered the telephone, and during the conversation between Purcell and Street appellant entered the conversation on an extension telephone. During the ensuing three-way conversation Sergeant Purcell asked Street if he remembered selling to appellant or to the upholstery shop a set of black Impala bucket seats. Appellant interposed, "You remember, the ones that had the bent backs." Street replied that he remembered that he had sold appellant seats of that description from an automobile that had been demolished in a wreck.

Following that conversation Sergeant Purcell went again to see appellant. Upon the R. P. Upholstery company premises was a small, garage-type building, which Sergeant geant Purcell entered in the company of appellant and with his consent. Sergeant Purcell observed in the building quite a few items of upholstery material, bucket seats, a few consoles and other automotive equipment. He also observed a set of black bucket seats from a late model Chevrolet that were extremely dirty and the back seat with the bucket seats was very badly bent. Sergeant Purcell again asked appellant about receipts for the equipment, and appellant replied that he had all kinds of receipts because he bought a large number of interiors for automobiles. Sergeant Purcell asked appellant if he had any more bucket seats and automobile interiors at any other location, and appellant said, "No." Appellent denied that he had any such equipment in his garage at home. He also said that he would not like to show his garage to Sergeant Purcell, at which time Sergeant Purcell handed him a search warrant. The two men proceeded to appellant's garage. Appellant unlocked the garage, and

Sergeant Purcell observed a large number of bucket seats and other automotive equipment, including the console taken from Scott's automobile. Sergeant Purcell took possession of the seats and consoles belonging to Price and Scott, together with certain other seats which were later returned to appellant.

Bucket seats are ordinarily identifiable by packing slips contained in the seats, showing the type of automobile in which the seat has been placed. The packing slips from Price's and Scott's bucket seats were left in the victims' automobiles by the thieves. There was a packing slip found with the bent seats to which Street had referred, but there were no packing slips with the victims' bucket seats located on the appellant's premises.

Sufficiency of the Evidence

Direct evidence that one charged with receiving stolen property knew that it was stolen is rarely available. There was circumstantial evidence from which the jury could properly have found that appellant had the requisite guilty knowledge. Possession of recently stolen property, accompanied by an unsatisfactory explanation

or by suspicious circumstances, justifies an inference that the goods were received with knowledge that they were stolen. (*People v. Lyons* (1958) 50 Cal.2d 245,258; *People v. Du Bont* (1965) 235 Cal.App.2d 844,848.) "False or evasive answers to material questions with reference to the ownership of stolen property tend to prove such knowledge. (*People v. Reynolds* (1957) 149 Cal.App.2d 290,294; see also *People v. Cole* (1903), 141 Cal. 88,90; *People v. Boinus* (1957), 153 Cal.App.2d 618,621-622; *People v. Malouf* (1955), 135 Cal.App.2d 697,707; *People v. Hartridge* (1955), 134 Cal.App.2d 659,665; *People v. Boyden* (1953), 116 Cal.App.2d 278,288; *People v. Jacobs* (1925), 73 Cal.App. 334,339-343.)" *People v. Lyons, supra*, 50 Cal.2d at 258.

The bucket seats taken from Price's automobile on June 7, 1966, were found in appellant's possession the following day. Appellant said that he purchased those seats from Dan Street, but subsequent investigation revealed that the seats he had bought from Street were not the seats found in appellant's truck. Appellant told Price that the seats found on his truck were not Impala seats. The statement was false. Appellant denied that he

had additional automobile interiors at his residence or garage; the statement was false.

The evidence, together with the inferences appropriately drawn therefrom, adequately sustains the conviction.

Admission of Incriminating Statements Not Error

Appellant urges that there was error in the admission into evidence of incriminating statements made by appellant to Sergeant Purcell because he says the statements were elicited without complying with the *Dorado-Escobedo-Miranda* warnings.[1] The record shows adequate compliance with the *Dorado-Escobedo* warning; therefore the sole possible ground for complaint is the failure to comply with the *Miranda* warning. There was no objection to the admission of the challenged testimony in the trial court. The case was tried after the *Miranda* case was well known. The objection cannot be raised for the first time

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[1] *People v. Dorado* (1965) 62 Cal.2d 338; *Escobedo v. Illinois* (1964) 378 U.S. 478; *Miranda v. Arizona* (1966), 384 U.S. 436.

on appeal. Although no case has been cited to us involving a trial after the *Miranda* decision relating to the necessity for a *Miranda* objection in the trial court to preserve the point for appeal, we see no reason why the same rule should not be applied to a *Miranda* warning as has been consistently applied to a *Dorado-Escobedo* warning. (*People v. Ray* (1967) ___ Cal.App.2d ___*; *People v. Crooks* (1967) ___ Cal.App.2d ___**.) Appellant implies that the trial court had a duty to exclude the testimony relating appellant's incriminating statements upon its own motion. He cites no authority for this proposition, and indeed there is none. The trial court did not err in failing to exclude appellant's extrajudicial statements to Sergeant Purcell.

Error in Limiting Cross-Examination

Appellant claims that the court prejudicially erred in sustaining the prosecuting attorney's general objection to a question posed to Sergeant Purcell on cross-examination, and in unduly restrict-

* 252 A.C.A. 1002,1029
** 250 A.C.A. 895, 900

ing the scope of cross-examination of Sergeant Purcell.

From Sergeant Purcell's testimony on direct examination the following picture emerged: Sergeant Purcell was investigating a ring of thieves whose specialty was the collection and distribution of stolen automobile interiors. During the week before the Price bucket seats were seen in appellant's parked truck, Purcell talked to appellant "numerous times." Price was able to identify his stolen bucket seats in appellant's truck. Purcell, in Price's presence, succeeded in eliciting from appellant explanations for his possession of the Price equipment which were false and evasive. The investigation culminated in the discovery of the remaining parts of the Price automobile and items from the Scott automobile. The prosecuting attorney brought out from Purcell, without objection by defense counsel, the seizure of almost two hundred other items of equipment.[2]

---

[2] "Q [D]id you recover a number of seats from the defendant's place of business? A Yes. Q Did you find packing slips in any of the seats? A In the ones that I recovered, no. Q How many --

During defense counsel's cross-examination of Sergeant Purcell the following dialogue took place: "Q At any time after June 9th did you ever go upon Mr. Canada's premises again? A Yes. Q When was that? MR. BURNETT: I'm going to object as immaterial to any issue here. THE COURT: Sustained. If counsel want to approach the bench and show the materiality I will listen to you. (The following proceedings were had at the bench, outside the hearing of the jurors:) MR. UNMACHT: I want to establish that they seized about $10,000 worth of property and that this was all returned to the defendant, to show that he wasn't in possession of stolen property, and, second, that he was cooperative -- THE COURT: It wouldn't show anything except it might show that they couldn't prove it was stolen property. Objection sustained. MR. UNMACHT: How

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A Exception, sorry: except in the back of this set that we have here marked Exhibit 6. Q How many seats do you say that you recovered from his place of business? A The number of seats I couldn't say. I believe there was 171 items. I could be a little bit off. This is approximate. Q Most of which were seats and consoles? A Almost all seats and consoles except for 21, 22 radios."

about bringing in prior times that he was on the premises? The district attorney has asked him the different times that he was on the defendant's premises, and I would like to examine him on the same thing. THE COURT: That wouldn't make it admissible, if he did something that got by -- and I don't recall specifically that he did -- it is immaterial to this proceeding."

The trial court is necessarily given broad discretion in controlling the examination of witnesses and in limiting the introduction of evidence to relevant and material matters (Penal Code, §1044; Witkin, *Cal. Evidence* (2d ed. 1966) §1078, p.999.) In exercising that discretion, however, the court must accord defense counsel in a criminal case wide latitude in cross-examining the prosecution's witnesses because the right of cross-examination is considered implicit in the criminal defendant's constitutional right of confrontation. (*Douglas v. Alabama* (1965) 380 U.S. 415,418-419; Witkin, *Cal.Evidence, supra*, p.1106.) Constitutional standards are not measured in either feet or inches: The amount of room which must be given to defense counsel to probe a

prosecution witness depends upon all of the circumstances of a particular case. If the proof of guilt rests almost entirely upon the credibility of a single witness, the greatest latitutde must be given to the cross-examiner (e.g., *People v. Scholl* (1964) 225 Cal.App.2d 558,562-564; *People v. Little* (1956) 142 Cal.App. 2d 513,516-519; *People v. Ormes* (1948) 88 Cal.App.2d 353,359). On the other hand, if the proof consists of the testimony of several witnesses, as it did in this case, the cross-examination of one of them assumes relatively less importance and the breadth of cross-examination accordingly may be more restricted without depriving the defendant of a full and fair trial.

In asking Sergeant Purcell about his visits to appellant's premises after June 9, defense counsel expected to prove that the articles seized by Sergeant Purcell, other than those which were the subject of the information, were returned to appellant. He explained to the court that his purpose in eliciting this evidence was "to show that he wasn't in possession of stolen property, and second, that he was cooperative --."

How a return of seized equipment proves cooperativeness on the appellant's part eludes us, but even if some such inference could be drawn, the exclusion did not harm the appellant because Sergeant Purcell had already testified expressly that appellant was cooperative. From proof that seized articles were returned, an inference may arise that the returned items were not stolen. From that inference, together with proof that other articles were seized and not returned, the further inference may be drawn that the seized articles not returned were stolen. But no inference can be drawn that seized items which were not returned were not stolen from proof that other seized items were returned. The theories of relevance presented by defense counsel to the trial court did not sustain his contention.

Counsel on appeal urges that the exclusion was error because the defense attorney was foreclosed from dispelling the impression the jury received from the direct examination that appellant had received almost 200 items of stolen property. Appellant's counsel says: "Even though the evidence as to two sets of bucket seats

was weak, what about the other 168 or so items which were 'recovered?'" The evidence that appellant knowingly received the stolen articles charged in the information was not weak. It is true that the jury was not going to be impressed in appellant's favor by evidence at least hinting that he had possession of many other articles which the police thought were stolen. The argument made by counsel on appeal, however, was never even suggested to the trial court. Although the trial court might have been justified in taking a more liberal view than it did of the proposed inquiry on cross-examination, the unfavorable inferences which the jury might have drawn are at best tenuous and we cannot say that the trial court abused its discretion in sustaining the objection. Even if we assumed *arguendo* that the court erred in sustaining the objection, the error under all of the circumstances of this case was harmless. Moreover, Purcell's direct testimony about the other articles recovered was immaterial and that evidence could have been excluded if defense counsel had properly objected to it. He made no objection. "Legitimate cross-examination does not

extend to matter improperly admitted on direct examination. Failure to object to improper questions on direct examination may not be taken advantage of on cross-examination to elicit immaterial or irrelevant testimony. The So-called 'open the gates' argument is a popular fallacy." (*People v. McDaniel* (1943) 59 Cal.App.2d 672,677; Witkin, *Cal. Evidence* (2d ed. 1966) §1267, pp.1173-1174.)

The remaining claim is that the court erred prejudicially in excluding a line of interrogation about "prior times that he was on the premises." If what defense counsel had in mind was interrogating Sergeant Purcell about his activities on the premises before June 9 which had some connection with the items which were the subject of the prosecution or which had a bearing upon the conversations between Sergeant Purcell and the appellant, to which the latter had testified on direct examination, the proposed interrogation would have been entirely proper and the foreclosure of such examination would have been erroneous. It is obvious from the remarks of the trial court, however, that the court did not so understand the proposed line of inquiry. If the trial

court misapprehended the nature of the examination which defense counsel proposed, defense counsel should have reframed his inquiry or explained his purpose to the trial court. Not having done so, he cannot claim error on appeal based on undue restriction of the scope of cross-examination.

Cross-examining counsel is not required to make an offer of proof to establish his purpose in examining an adverse witness. (*People v. Burton* (1961) 55 Cal. 2d 328,344; *Tossman v. Newman* (1951) 37 Cal.2d 522,525; but compare *People v. Lyons* (1958) 50 Cal.2d 245,261.) "However, when the trial judge, by his general ruling that the inquiry was 'incompetent, irrelevant and immaterial,' showed that he was overlooking the fact that it might have a proper purpose, we think that defense counsel should have indicated to the judge the theory upon which he based his question. Instead, he went on to a different line of inquiry." (*People v. Burton, supra*, 55 Cal.2d at 344-345).

The judgment is affirmed.

We concur: HUFSTEDLER, J.
STEPHENS, J.
AISO, J.*

*Assigned by Chairman of the Judicial Council

VЬЬEИDIX „B„

"APPENDIX "B"

Order Due
March 22, 1968

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL
2nd District, Division 5, Crim. No. 13300

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE
v.
CANADA

Appellant's petition for hearing DENIED.

FILED
March 20, 1968
WILLIAM I. SULLIVAN,
Clerk

MOSK,
Acting Chief Justice

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 11th day of April A.D. 1968.

WILLIAM I. SULLIVAN

By D. Blomgren
Deputy Clerk

PROOF OF SERVICE BY MAIL
1013a and 2015.5 C.C.P.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 215 West Fifth Street, Los Angeles, California 90013, that on April , 1968, I served the within PETITION FOR WRIT OF CERTIORARI (Canada v. State of California) on the following named party by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said party at the address as follows:

ATTORNEY GENERAL
STATE OF CALIFORNIA
600 STATE BUILDING
LOS ANGELES, CALIFORNIA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April , 1968, at Los Angeles, California.

_____

Subscribed and sworn to before me
this day of April, 1968.

_____
Notary Public in and for the State of
California.